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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ROMAN ZELTSER, ANNA TYUTYUNIK, and  
JARED BROCK, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

No. 13 Civ. 1531 (HB)

MERRILL LYNCH & CO., INC.; MERRILL  
LYNCH, PIERCE, FENNER & SMITH, INC.,  
and BANK OF AMERICA CORPORATION,

Defendants.

**DECLARATION OF OSSAI MIAZAD IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CONDITIONAL  
CERTIFICATION AND COURT-AUTHORIZED  
NOTICE PURSUANT TO SECTION 216(b) OF THE FLSA**

I, Ossai Miazad, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am a partner at Outten & Golden LLP, attorneys for Plaintiffs herein, and an attorney in good standing admitted to practice in the State of New York and before this Court. I make this declaration in support of Plaintiffs' Motion for Conditional Certification and Court-Authorized Notice Pursuant to Section 216(b) of the FLSA.

### **Procedural History**

2. Plaintiffs Roman Zeltser and Anna Tyutyunik filed this lawsuit on March 17, 2013.

3. On September 3, 2013, Plaintiffs filed an amended complaint adding Jared Brock as a named plaintiff and asserting claims under California law.

4. The parties have engaged in some discovery.

5. The parties have responded to written discovery requests.

6. Plaintiffs have produced all documents responsive to Defendants' document requests.

7. Defendants have produced some documents in response to Plaintiffs' document requests, but have not produced any ESI.

8. Plaintiffs have noticed the depositions of Merrill's 30(b)(6) witnesses, and Defendants have noticed the depositions of the three named plaintiffs.

9. In addition to the three named plaintiffs, six additional Field FSAs also have joined the case as opt-in Plaintiffs.

10. In a previous class action case on behalf of FSAs who worked in Merrill's call centers for unpaid overtime wages against Merrill, *Hernandez, et al. v. Merrill Lynch & Co., Inc., at al.*, No. 12 Civ. 8472 (S.D.N.Y. filed Nov. 22, 2011), the plaintiffs were represented by two of the same law firms representing Plaintiffs in this case. The parties in *Hernandez* reached

a class-wide settlement, which was finally approved on March 21, 2013, No. 11 Civ. 8472, 2013 WL 1209563 (S.D.N.Y. Mar. 21, 2013).

11. In *Hernandez*, the court granted plaintiffs' conditional certification motion before they even filed their reply brief.

**Exhibits**

12. Attached as Exhibit 1 are true and correct copies of selected pages from Bank of America Corporation's 2012 Form 10-K, dated February 28, 2013.

13. Attached as Exhibit 2 is a true and correct copy of Financial Solutions Advisor New Hire Training, P000939-59.

14. Attached as Exhibit 3 is a true and correct copy of Candidate Slating Job Spec., P000015-16.

15. Attached as Exhibit 4 is a true and correct copy of Financial Solutions Advisor Role Evolution Training, P001513-71.

16. Attached as Exhibit 5 is a true and correct copy of Financial Solutions Advisor Review Form, P000788-97.

17. Attached as Exhibit 6 is a true and correct copy of Plaintiffs' Amended Complaint.

18. Attached as Exhibit 7 is a true and correct copy of the Declaration of Roman Zeltser.

19. Attached as Exhibit 8 is a true and correct copy of the Declaration of Anna Tyutyunik.

20. Attached as Exhibit 9 is a true and correct copy of the Declaration of Jared Brock.

21. Attached as Exhibit 10 is a true and correct copy of the Declaration of Marc Steinberg.
22. Attached as Exhibit 11 is a true and correct copy of the Declaration of Teesta Kaur.
23. Attached as Exhibit 12 is a true and correct copy of the Declaration of Peter Cole.
24. Attached as Exhibit 13 is a true and correct copy of the Declaration of William Wesley.
25. Attached as Exhibit 14 is a true and correct copy of the Declaration of John Jacobson.
26. Attached as Exhibit 15 is a true and correct copy of New Hire Field FSA Learning, ML00001200-02.
27. Attached as Exhibit 16 is a true and correct copy of FSA New Hire Training, ML00001232-1302.
28. Attached as Exhibit 17 is a true and correct copy of Financial Solutions Advisor New Hire Training, P000960-87.
29. Attached as Exhibit 18 is a true and correct copy of New Hire FSA Learning, P000017-61.
30. Attached as Exhibit 19 is a true and correct copy of Your Appointment with the Merrill Edge Advisory Center, P000275.
31. Attached as Exhibit 20 is a true and correct copy of BCM Orientation to Financial Solutions Advisor On-boarding Guide, P000245-49.
32. Attached as Exhibit 21 is a true and correct copy of Financial Solutions Advisor New Hire Training, P000046-47.

33. Attached as Exhibit 22 is a true and correct copy of MEAC Investment Process, ML00001404-09.

34. Attached as Exhibit 23 is a true and correct copy of Investment Process Reference Guide, ML00001416-21.

35. Attached as Exhibit 24 is a true and correct copy of Compliance Overview, P000089-103.

36. Attached as Exhibit 25 is a true and correct copy of Suggested Scripting, P000351-56.

37. Attached as Exhibit 26 is a true and correct copy of Financial Solutions Advisors New Hire Training, P000734-87.

38. Attached as Exhibit 27 is a true and correct copy of Financial Solutions Advisors New Hire Training, P000915-38.

39. Attached as Exhibit 28 is a true and correct copy of Presenting Solutions Process, P000677-733.

40. Attached as Exhibit 29 is a true and correct copy of Financial Solutions Advisor New Hire Training, P000880-99.

41. Attached as Exhibit 30 is a true and correct copy of May 18, 2012 Write Up, P000179-80.

42. Attached as Exhibit 31 is a true and correct copy of April 6, 2012 Final Written Warning, P000563-65.

43. Attached as Exhibit 32 is a true and correct copy of FSA Performance Management Guidelines, ML00001057-60.

44. Attached as Exhibit 33 are true and correct copies of Bank of America FSA Job Postings.

45. Attached as Exhibit 34 is a true and correct copy of Weekly Connect for April 13, 2012, P000141.

46. Attached as Exhibit 35 is a true and correct copy of Preferred Sales FSA – Regional Business Plan, P000365-70.

47. Attached as Exhibit 36 are true and correct copies of Incentive Compensation Plans, ML00001060-80.

48. Attached as Exhibit 41 is a true and correct copy of Merrill Job Detail Listing, ML00001183.

49. Attached as Exhibit 42 is a true and correct copy of a Written Warning – Failure to Meet Performance Expectations, ML0000595-96.

50. Attached as Exhibit 43 is a true and correct copy of 2013 FB FSA Compensation Schedule of Credits, ML00001082-84.

51. Attached as Exhibit 44 is a true and correct copy of Performance Review: 2012 Mid-Year Review, ML00000688-96.

52. Attached as Exhibit 45 is a true and correct copy of Performance Review: 2012 Year End, ML00000935-40.

### **Notice**

53. Attached as Exhibit 37 is Plaintiffs' Proposed Notice.

### **Authorities**

54. Attached as Exhibit 38 is a true and correct copy of *Li v. Health Plus Prepaid Health Servs. Plan, Inc.*, No. 10 Civ. 1843 (S.D.N.Y. Dec. 20, 2010).

55. Attached as Exhibit 39 is a true and correct copy of *Ravenell v. Avis Budget Grp., Inc.*, No. 08 Civ. 2113 (E.D.N.Y. Sept. 29, 2010).

56. Attached as Exhibit 40 is a true and correct copy of *Stillman v. Staples, Inc.*, No. 07 Civ. 849 (D.N.J. July 3, 2008).

I declare under penalty of perjury under the laws of New York and the United States that the foregoing is true and correct.

Dated: January 30, 2014  
New York, New York

Respectfully submitted,

By: /s/ Ossai Miazad  
Ossai Miazad

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